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CORPORATION COMMISSION
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10 *Attorneys for Respondents Tom Hirsch, Diane Rose Hirsch,*

11 *Berta Walder, Howard Walder, Harish P. Shah, Madhavi H. Shah and Horizon Partners, LLC*

12 **BEFORE THE ARIZONA CORPORATION COMMISSION**

13 In the matter of:

DOCKET NO. S-20660A-09-0107

14 **RADICAL BUNNY, L.L.C., an Arizona**
15 **limited liability company,**

16 **HORIZON PARTNERS, L.L.C., an**
17 **Arizona limited liability company,**

18 **TOM HIRSCH (aka TOMAS N.**
19 **HIRSCH) and DIANE ROSE HIRSCH,**
20 **husband and wife;**

21 **BERTA FRIEDMAN. WALDER (aka**
22 **BUNNY WALDER, a married person,**

23 **HOWARD EVAN WALDER, a**
24 **married person,**

25 **HARISH PANNALAL SHAH and**
26 **MADHAVI H. SHAH, husband and**
27 **wife,**

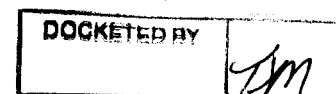
28 **Respondents.**

**RESPONDENTS' REPLY TO
SECURITIES DIVISION'S
RESPONSE TO RESPONDENTS'
AMENDED MOTION TO
SUPPLEMENT THE RECORD**

Arizona Corporation Commission

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26 The Securities Division staff confuses something that is dispositive in this
27 case, which the settlements are not, with something which is useful to the decision
28 process, which the settlements clearly are. Just because there are no “adjudicative

facts” that are not subject to reasonable dispute, does not mean that the Hearing Officer and ultimately the Commission should not have in the record the fact that two perfectly intelligent law firms agreed to pay many millions of dollars in spite of testimony from their own lawyers that they did nothing wrong. The settlements themselves are not subject to reasonable dispute. *See* Ariz. R. Evid. 201 (b). That makes the settlements judicially noticeable.

It does not mean that the Hearing Officer or the Commission must rule in any particular way, but it means that they should consider the settlements just like any normal reasonable man determining these issues would. Of course both law firms deny and continue to deny each and every claim and condition alleged against them. All we are saying is that the fact that these law firms were willing to pay so much money is relevant to whether the testimony of their lawyers can be believed.

Nor does the staff give intellectual honesty its due when it argues that we have conceded that we violated the security statutes. The only conclusively established fact, once judicially noticed, is the fact that these two law firms are willing to pay \$88.5 million. That is relevant but not conclusive as to whether a lawyer should be believed and it is relevant but not conclusive as to what the legal offsets are if such a determination becomes necessary on the record.

Conclusion

The Hearing Officer should make the two settlements a part of the record in this case. It would be fundamental error under any standard to exclude them.

RESPECTFULLY SUBMITTED this 1st day of August, 2012.

1 LAvELLE & LAvELLE, PLC

2 By:

3 Michael J. LaVelle

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Howard Walder, Harish P. Shah, Madhavi H. Shah and Horizon Partners,
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7 ORIGINAL and 13 COPIES filed this
8 1st day of August, 2012 with:

9 ARIZONA CORPORATION COMMISSION
10 Securities Division
11 1300 West Washington, Third Floor
12 Phoenix, Arizona 85007

13 COPY of the foregoing MAILED this
14 1st day of August, 2012 to:

15 Lyn Farmer
16 Chief Administrative Law Judge
17 ARIZONA CORPORATION COMMISSION
18 1200 West Washington
Phoenix, Arizona 85007

19 COPY of the foregoing MAILED this
20 1st day of August, 2012 to:

21 Julie Coleman
22 ARIZONA CORPORATION COMMISSION
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26
27
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